

AN ACT

RELATING TO ALCOHOLIC BEVERAGE SERVERS; RE-CREATING A SERVER
EDUCATION PROGRAM; ESTABLISHING PENALTIES AND FINES;
ENACTING AND REPEALING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-6C-6 NMSA 1978 (being Laws 1981,
Chapter 39, Section 102, as amended) is amended to read:

"60-6C-6. NO INJUNCTION OR MANDAMUS PERMITTED--
APPEAL.--

A. No injunction or writ of mandamus or other
legal or equitable process shall issue in any suit, action
or proceeding to prevent or enjoin any finding of guilt or
order of suspension or revocation or fine made by a liquor
control hearing officer under the provisions of Section 60-
6C-4 NMSA 1978. A licensee aggrieved or adversely affected
by an order of revocation, suspension or fine shall have the
right to appeal to the district court pursuant to the
provisions of Section 39-3-1.1 NMSA 1978.

B. No appeal shall have the effect of suspending
the operation of the order of suspension, revocation or
fine, but the liquor control hearing officer may, for good
cause shown and upon such terms and conditions as he may
find are just, in his discretion suspend the operation of
the order of suspension, revocation or fine pending the
appeal. The court shall tax costs against the losing party.

C. For purposes of this section, "licensee"
includes a person issued a server permit pursuant to the
Alcohol Server Education Article of the Liquor Control Act."

Section 2. A new section of the Liquor Control Act is

enacted to read:

"60-6D-11. ARTICLE DESIGNATION--ALCOHOL SERVER EDUCATION.--Chapter 60, Article 6D NMSA 1978 may be cited as the "Alcohol Server Education Article of the Liquor Control Act"."

Section 3. A new section of the Liquor Control Act is enacted to read:

"60-6D-12. PURPOSE.--The purpose of Chapter 60, Article 6D NMSA 1978 is to:

- A. enhance the professionalism of persons employed in the alcoholic beverage service industry;
- B. establish a program for servers, licensees and their lessees that includes the study of:
 - (1) the effect alcohol has on the body and behavior, including the effect on a person's ability to operate a motor vehicle when intoxicated;
 - (2) state law concerning liquor licensure, liquor liability issues and driving under the influence of intoxicating liquor;
 - (3) methods of recognizing problem drinkers and techniques for intervening with problem drinkers;
 - (4) methods of identifying false drivers' licenses and other documents used as evidence of age and identity to prevent the sale of alcohol to minors; and
 - (5) prevention of fetal alcohol syndrome;
- C. reduce the number of persons who drive while under the influence of intoxicating liquor and mitigate the physical and property damage caused by that behavior; and
- D. reduce the frequency of alcohol-related birth defects."

Section 4. A new section of the Liquor Control Act is enacted to read:

"60-6D-13. DEFINITIONS.--As used in Chapter 60, Article 6D NMSA 1978:

A. "director" means the director of the division;

B. "division" means the alcohol and gaming division of the regulation and licensing department;

C. "licensee" means a person issued a license pursuant to the provisions of the Liquor Control Act to sell, serve or dispense alcoholic beverages for consumption and not for resale;

D. "program" means an alcohol server education course and examination approved by the director to be administered by providers;

E. "provider" means an individual, partnership, corporation, public or private school or any other legal entity certified by the director to provide a program;

F. "server" means an individual who sells, serves or dispenses alcoholic beverages for consumption on or off licensed premises, including persons who manage, direct or control the sale or service of alcohol. "Server" does not include officers of a corporate licensee or lessee who do not manage, direct or control the sale or service of alcohol; and

G. "server permit" means an authorization issued by the director for a person to be employed or engaged to sell, serve or dispense alcoholic beverages."

Section 5. A new section of the Liquor Control Act is enacted to read:

"60-6D-4. SERVER PERMITS REQUIRED--ALCOHOL SERVICE OR

SALES.--No person shall be employed as a server on a licensed premises unless that person has obtained a server permit pursuant to the provisions of Chapter 60, Article 6D NMSA 1978."

Section 6. A new section of the Liquor Control Act is enacted to read:

"60-6D-15. PROGRAMS REQUIRED--APPROVAL BY DIRECTOR--CONTENT OF PROGRAM--SURETY BOND.--

A. The director shall have the authority to approve programs offered by providers.

B. The program curriculum shall include the following subjects:

(1) the effect alcohol has on the body and behavior, including the effect on a person's ability to operate a motor vehicle when intoxicated;

(2) the effect alcohol has on a person when used in combination with legal or illegal drugs;

(3) state laws concerning liquor licensure, liquor liability issues and driving under the influence of intoxicating liquor;

(4) methods of recognizing problem drinkers and techniques for intervening with problem drinkers;

(5) methods of identifying false driver's licenses and other documents used as evidence of age and identity to prevent the sale of alcohol to minors; and

(6) the incidence of alcohol-related birth defects.

C. The director shall require each provider to post a surety bond in the amount of five thousand dollars (\$5,000). The director may, in the director's discretion,

allow a provider to submit other evidence of financial responsibility satisfactory to the director in lieu of posting a surety bond in the amount of five thousand dollars (\$5,000)."

Section 7. A new section of the Liquor Control Act is enacted to read:

"60-6D-16. SERVER PERMITS--FAILURE TO PRODUCE PROOF.--

A. Every licensee shall maintain on the licensed premises copies of the server permits of the licensee, his lessee, if any, and each server then employed by the licensee or lessee at all times and make copies available to the director and to the agents or employees of the department of public safety upon request.

B. Failure to produce a copy of a server permit is prima facie evidence that a server permit has not been issued and shall subject the licensee to fines and penalties as determined by rule adopted by the director."

Section 8. A new section of the Liquor Control Act is enacted to read:

"60-6D-17. SERVER PERMITS--ISSUANCE--OWNERSHIP--FEES.--

-

A. The director shall issue a server permit to each applicant who obtains a certificate of program completion and provides such other information as may be required by the director. The director may, in the director's discretion, issue temporary server permits if circumstances warrant such issuance.

B. Server permits shall not be issued to graduates of programs that are not approved by the director.

C. A server permit is the property of the server

to whom it is issued.

D. The director may charge a fee for the issuance of the server permit.

E. Server permits shall be valid for a period of five years from the date the server permit was issued.

F. A certificate of completion of an alcohol server education program issued pursuant to previous law shall remain valid until the date of its expiration."

Section 9. A new section of the Liquor Control Act is enacted to read:

"60-6D-18. SERVER PERMIT--SUSPENSION--REVOCATION--ADMINISTRATIVE FINES--PENALTIES.--In addition to any other penalties available, the following penalties may be imposed for sales to minors or intoxicated persons in violation of the provisions of the Liquor Control Act or rules of the division:

A. The director may suspend a server's server permit for a period of thirty days or fine the server in an amount not to exceed five hundred dollars (\$500), or both, when he finds that the server is guilty of a first offense of selling, serving or dispensing an alcoholic beverage to an intoxicated person in violation of Section 60-7A-16 NMSA 1978 or to a minor in violation of Section 60-7B-1 NMSA 1978;

B. The director shall suspend a server's server permit for a period of one year when he finds that the server is guilty of a second offense of selling, serving or dispensing alcoholic beverages to intoxicated persons in violation of Section 60-7A-16 NMSA 1978 or to minors in violation of Section 60-7B-1 NMSA 1978 arising separately

from the incident giving rise to his first offense;

C. The director shall permanently revoke a server's server permit when he finds that the server is guilty of a third offense of selling, serving or dispensing alcoholic beverages to intoxicated persons in violation of Section 60-7A-16 NMSA 1978 or to minors in violation of Section 60-7B-1 NMSA 1978 arising separately from the incidents giving rise to his first and second offenses.

D. No person whose server permit is suspended or revoked pursuant to the provisions of this section may be a server of alcoholic beverages on a licensed premises during the period of suspension or revocation.

E. No person whose server permit is suspended may serve alcoholic beverages on or after the date of suspension unless the person obtains a new server permit in accordance with the provisions of Article 6D of Chapter 60.

F. Nothing in this act shall be interpreted to waive any license holder's liability that may arise pursuant to the provisions of this act."

Section 10. A new section of the Liquor Control Act is enacted to read:

"60-6D-19. ALCOHOL SERVER EDUCATION; REQUIRED FOR LICENSE RENEWAL.--A licensee seeking renewal of a license shall submit to the division, as a condition of license renewal, proof that the licensee, his lessee, if any, and each server employed by the licensee or lessee during the prior licensing year have or had valid server permits at all times that alcoholic beverages were sold, served or dispensed."

Section 11. A new section of the Liquor Control Act is

enacted to read:

"60-6D-20. ADMINISTRATIVE PROCEEDINGS--HEARINGS.--

A. Hearings for the suspension or revocation of any server's server permit or for imposing a fine on the server, or both, shall be conducted in accordance with the provisions of Sections 60-6C-2 through 60-6C-6 NMSA 1978.

B. The director may suspend or revoke a server permit or impose a fine on a server, or impose a combination of those penalties, only if the server violates the provisions of Section 60-7A-16 or 60-7B-1 NMSA 1978."

Section 12. A new section of the Liquor Control Act is enacted to read:

"60-6D-21. ADVISORY COMMITTEE CREATED--MEMBERS--MEETINGS.--

A. The "alcohol server education advisory committee" is created and is administratively attached to the division. The membership of the committee shall consist of:

- (1) the director;
- (2) the secretary of public safety or his designee;
- (3) the secretary of health or his designee;
- (4) the chief of the traffic safety bureau of the state highway and transportation department or his designee;
- (5) three representatives from the retail liquor industry;
- (6) a representative from the wholesale liquor industry;

(7) a representative from the insurance industry; and

(8) a representative from a nonprofit organization whose primary purpose is to reduce drunk driving in New Mexico.

B. The representative members of the committee shall be selected by the director. The director shall serve as chair of the committee.

C. The committee shall meet as often as necessary to conduct business, but no less than twice a year. Meetings shall be called by the director. Five members shall constitute a quorum."

Section 13. A new section of the Liquor Control Act is enacted to read:

"60-6D-22. ADVISORY COMMITTEE--DUTIES.--The alcohol server education advisory committee shall assist the division with development of:

A. standards, course requirements and materials for the program;

B. procedures attendant to the program;

C. certification standards for providers and instructors; and

D. certification of alcohol server education programs that meet the minimum standards of the alcohol server education advisory committee."

Section 14. Section 60-7A-12 NMSA 1978 (being Laws 1981, Chapter 39, Section 78, as amended) is amended to read:

"60-7A-12. OFFENSES BY DISPENSERS, CANOPY LICENSEES, RESTAURANT LICENSEES, GOVERNMENTAL LICENSEES OR THEIR

LESSEES AND CLUBS.--It is a violation of the Liquor Control Act for any dispenser, canopy licensee, restaurant licensee, governmental licensee or its lessee or club to:

A. receive any alcoholic beverages for the purpose of or with the intent of reselling the same from any person other than one duly licensed to sell alcoholic beverages to dispensers for resale;

B. sell, possess for the purpose of sale or to bottle any bulk wine for sale other than by the drink for immediate consumption on his licensed premises;

C. directly, indirectly or through any subterfuge own, operate or control any interest in any wholesale liquor establishment or liquor manufacturing or wine bottling firm; provided that this section shall not prevent a dispenser from owning an interest in any legal entity, directly or indirectly or through an affiliate, that wholesales alcoholic beverages and that operates or controls an interest in an establishment operating pursuant to the provisions of Subsection B of Section 60-7A-10 NMSA 1978;

D. sell or possess for the purpose of sale any alcoholic beverages at any location or place except his licensed premises or the location permitted pursuant to the provisions of Section 60-6A-12 NMSA 1978;

E. employ or engage a person to sell, serve or dispense alcoholic beverages if the person has not been issued a server permit; or

F. employ or engage a person to sell, serve or dispense alcoholic beverages during a period when the server permit of that person is suspended or revoked."

Section 15. REPEAL.--Sections 60-6D-1 through 60-6D-8

